

PROB. 12B  
(7/93)

ORIGINAL

United States District Court

for the

DISTRICT OF HAWAII

**Request for Modifying the Conditions or Term of Supervision  
with Consent of the Offender**

*(Probation Form 49, Waiver of Hearing is Attached)*

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII  
AUG 21 2007  
at 2 o'clock P.M.  
SUE BENIA, CLERK

Name of Offender: FRANCIS OGATA, aka "Bulla"

Case No. CR 04-00434ACK-01

Name of Sentencing Judicial Officer: The Honorable Alan C. Kay  
Senior U.S. District Judge

Date of Original Sentence: 2/28/2005

Original Offense: Conspiracy to Possess With Intent to Distribute 5 Grams or More of  
Methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and 846,  
a Class B felony

Original Sentence: The subject was sentenced to twenty-five (25) months  
imprisonment and three (3) years supervised release. The  
following special conditions were ordered: 1) That the defendant  
participate in a substance abuse program, which may include drug  
testing at the discretion and direction of the Probation Office; and  
2) That the defendant provide the Probation Office access to any  
requested financial information.

Modified Sentence: On 12/22/2005, a Request for Modifying the Conditions of  
Supervision With Consent of the Offender was filed modifying the  
conditions of supervision as follows: 3) That the defendant is  
prohibited from the possession and consumption of alcohol during  
the term of his supervised release.

On 5/8/2006, a Request for Modifying the Conditions of  
Supervision With Consent of the Offender was filed modifying the  
conditions of supervision as follows: That the defendant shall  
refrain from any unlawful use of a controlled substance. The  
defendant shall submit to one drug test within 15 days of the  
commencement of supervision and at least two drug tests  
thereafter but no more than 8 valid drug tests per month during the  
term of supervision (mandatory condition).

Type of Supervision: Supervised Release    Date Supervision Commenced: 8/12/2005

**PETITIONING THE COURT**

[X] To modify the conditions of supervision as follows:

- 4) *That the defendant shall participate in mental health counseling at the discretion and direction of the Probation Office.*
- 5) *That the defendant serve 2 months of home detention with electronic monitoring as arranged by the Probation Office. During this time, the defendant shall remain at his place of residence during non-working hours and shall not leave his residence without the approval of the Probation Office. The defendant shall wear an electronic monitoring device and follow electronic monitoring procedures pursuant to the Participant's Agreement and shall earn leave as determined by the Probation Office. The defendant also will be responsible for the payment of the electronic monitoring costs as directed by the Probation Office.*

**CAUSE**

The subject began his term of supervised release on 8/12/2005.

On 5/11/2007, the Court was notified by way of a Probation Form 12A, Report on Offender Under Supervision, that on 4/20/2007, the subject was arrested for soliciting a prostitute. A review of the police reports revealed that on 4/20/2007, undercover (UC) Honolulu Police Department (HPD) officers were in Waikiki conducting a prostitution sting. At approximately 10:00 p.m., the subject approached a female UC, who was posing as a prostitute, and offered her \$100 in exchange for "everything." According to HPD officers, "everything" is street vernacular for sexual intercourse and fellatio. The UC responded by stating the price was \$200. The subject negotiated with the UC and offered \$150 for "everything." The UC agreed to accept the \$150 and the subject was subsequently arrested for Prostitution. The Court was further informed that the subject was pending legal proceedings in Honolulu District Court.

Based upon the fact that the subject had not yet been convicted of any crime, Your Honor agreed with this officer's recommendation to take no action at that time. The Court was notified that if the subject was convicted, further action would be recommended.

The purpose of this report is to notify the Court that on 7/12/2007, in Honolulu District Court, the subject pled no contest to the charge of Promoting Prostitution. The subject was sentenced to 6 months of probation and was ordered to pay a \$500 fine.

With regards to this conviction, the subject acknowledges that he made a terrible decision and is remorseful for his actions. Additionally, the subject explained that he felt he needed the assistance of a counselor to help him determine why he makes poor

decisions. As a result, the subject has voluntarily entered into mental health counseling with psychologist Kevin Connors. The subject will continue to see Dr. Connors twice monthly for psychotherapy treatment.

As background information, the subject has been working as a carpenter for Swinerton Builders since October 2005. He currently earns between \$23 and \$35 per hour and receives positive performance reports from his employer. Additionally, he recently completed drug treatment at Hina Mauka and has remained free of any positive drug tests for approximately 1 year. The subject has also re-established ties with his two minor children and has visitation with them on weekends. Presently, the subject remains in overall compliance.

As a result of the subject's positive progress, it is recommended that the Court allow the subject to continue on supervision despite his new law violation. However, in order to impress upon the subject the importance of abiding by the law, it is recommended that he be required to serve 2 months of home detention with electronic monitoring. The subject has agreed to serve two months of home detention. Additionally, the subject has agreed to maintain mental health counseling at the direction and discretion of the Probation Office.


Attached is a signed Waiver of Hearing to Modify Conditions of Supervised Release. The subject waives his right to a hearing and to assistance of counsel. The subject agrees to the modification of the conditions of supervised release. The subject's attorney and the U.S. Attorney's Office have been notified of the proposed modification.

Respectfully submitted by,



MARK T. NUGENT  
U.S. Probation Officer

Approved by:



PETER D. YOSHIHARA  
Supervising U.S. Probation Officer

Date: 8/6/2007

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THE COURT ORDERS:

- ☐ No Action
- ☐ The Extension of Supervision as Noted Above
- ☒ The Modification of Conditions as Noted Above
- ☐ Other



ALAN C. KAY

Senior U.S. District Judge

8/20/07

Date

PROB 49  
(5/96)

# United States District Court

District of Hawaii

## Waiver of Hearing to Modify Conditions of Probation/Supervised Release and/or Extend Term of Supervision

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release and/or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release and/or to the proposed extension of my term of supervision:

- ☐ To extend the term of supervision for \_\_\_\_\_ years, for a total term of \_\_\_\_\_ years.  
☒ To modify the conditions of supervision as follows:

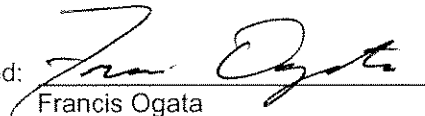
- 4) *That the defendant shall participate in mental health counseling at the discretion and direction of the Probation Office.*
- 5) *That the defendant serve 2 months of home detention with electronic monitoring as arranged by the Probation Office. During this time, the defendant shall remain at his place of residence during non-working hours and shall not leave his residence without the approval of the Probation Office. The defendant shall wear an electronic monitoring device and follow electronic monitoring procedures pursuant to the Participant's Agreement and shall earn leave as determined by the Probation Office. The defendant also will be responsible for the payment of the electronic monitoring costs as directed by the Probation Office*

Witness:



Mark T. Nugent  
U.S. Probation Officer

Signed:



Francis Ogata

8-2-7

Date